



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Holtman and Sons, Inc.

File: B-246062

Date: February 13, 1992

Robert B. Ansley, Jr., Esq., Smith, Currie & Hancock, for the protester.
William E. Thomas, Jr., Esq., and Kenneth MacKenzie, Esq., Department of Veterans Affairs, for the agency.
Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid delivered 39 minutes before bid opening to warehouse office at government facility by Federal Express was properly rejected as late where it did not arrive in the bid opening room on time because it was not delivered to the exact location designated in the solicitation and the mailing envelope received by the agency was not marked with a sealed bid label or other information that identified the contents as a bid.

DECISION

John Holtman and Sons, Inc. protests the Department of Veterans Affairs' (VA) rejection of its bid as late under invitation for bids (IFB) No. 552-52-91, for the repair and replacement of various roofs at the VA's Medical Center in Dayton, Ohio. Holtman's bid was rejected because it was not received in the bid opening room until after the scheduled bid opening.

We deny the protest.

The IFB required that all bids be received in Room 304, the bid depository, by 10:00 a.m. on September 24, 1991. Bidders were instructed to address their bids as follows:

"Chief, A&MMS (90C)
Room 304, Building 126
Department of VA Medical Center
4100 West Third Street
Dayton, Ohio 45428."

The IFB further instructed bidders that bids must be submitted in sealed envelopes or packages showing the time specified for receipt, the solicitation number, and the name and address of the bidder. Federal Acquisition Regulation (FAR) § 52.214-5. In addition, the solicitation package included a sealed bid label which has spaces for the bidder to furnish the required information.

On September 23, Holtman sent its bid in a Federal Express mailing envelope addressed to the specified location for delivery on September 24. The inner envelope, containing the bid, had a sealed bid label affixed. The Federal Express airbill was annotated: "Deliver before 9:30 a.m." The protester's bid package, along with four other packages, was delivered by Federal Express to the VA Medical Center warehouse office on the first floor of Building 126 at 9:21 a.m. on bid opening day.

Bid opening occurred as scheduled at 10:00 a.m. and four bids were opened and recorded on the bid abstract. Later that day, Holtman contacted the agency to obtain bid results and was informed that its bid had not been timely received or recorded at bid opening. The contracting officer subsequently located Holtman's Federal Express package which had been delivered to Room 304, by the warehouse/receiving foreman at approximately 10:50 a.m., after the scheduled bid opening. Holtman was informed that its bid was received late and would not be considered for award. This protest followed.

Holtman contends that the paramount cause of the late receipt was government mishandling after its delivery to the VA. Specifically, the protester asserts that it affixed a sealed bid label, properly filled in, to the lower left corner of the Federal Express mailing envelope to indicate that the package contained bid documents. Holtman also contends that had the agency personnel followed the delivery instructions on the Federal Express airbill, its bid package would have arrived in Room 304 on time.

Bidders generally are responsible for delivering their bids to the proper place at the proper time, and late delivery of a bid requires its rejection. Barnes Elec. Co., Inc., B-241391.2, Jan. 4, 1991, 91-1 CPD ¶ 10. A bid delivered by a commercial carrier is hand-carried and is late when it does not arrive timely at the location designated in the solicitation unless some improper government action is shown to be the sole or paramount cause for lateness. Weather Data Servs., Inc., B-238970, June 22, 1990, 90-1 CPD ¶ 582. If the late receipt results from the failure of a bidder to reasonably fulfill its responsibility for ensuring timely delivery to the specified location, the late bid may not be considered. Id.

As noted above, the solicitation required bidders to deliver their bids to the office specified in the solicitation. The phrase "office specified in the solicitation" refers to the ultimate destination of the bid, and not any intermediate stop in transit, such as a warehouse office. LectroMagnetics, Inc., 56 Comp. Gen. 50 (1976), 76-2 CPD ¶ 371. Holtman's bid package was delivered 39 minutes prior to bid opening to the warehouse office in Building 126, rather than Room 304. The warehouse office was simply an intermediate stop in transit and was not the ultimate destination for receipt of bids or the place of public bid opening. Since Holtman's bid was not received in Room 304--the ultimate destination for receipt of bids--until after bid opening, the VA properly determined Holtman's bid was late.

Our Office conducted a hearing in this matter at which four witnesses gave sworn testimony concerning the circumstances of the bid delivery: Mr. Ronald Holtman, president of Holtman; Ms. Debbie Miller, the warehouse/receiving clerk; Mr. William Miller, the warehouse/receiving foreman; and Mr. James Harrison, the contracting officer. Mr. Holtman testified that he personally affixed a sealed bid label on the lower left portion of the Federal Express mailing envelope and later delivered the bid package to a Federal Express location 1 day before the scheduled bid opening. Video Transcript (VT) 13:07:36; 13:08:10. He also testified that he wrote the delivery instructions "deliver before 9:30 a.m." on the Federal Express airbill. VT 13:21:00; 15:52:40.


Ms. Miller, testified that the Federal Express courier delivered five packages to the warehouse office on September 24 at 9:21 a.m.. VT 13:49:45. Of these, the Holtman package did not have a sealed bid label or any type marking to indicate that it contained a bid; two packages had sealed bid labels which identified them as bids for a 2:00 p.m. bid opening later that day; the fourth package was to be delivered elsewhere on the third floor, and the fifth was to be delivered to the hospital. VT 13:49:45; 13:50:08. Ms. Miller testified that she placed the four packages to be delivered to the third floor on the mail table in Mr. Miller's office. VT 13:49:45; 13:51:53. The testimony elicited from Mr. Miller and Mr. Harrison regarding the package submitted by Holtman was that there was no sealed

bid label affixed to the Federal Express mailing envelope¹ or any other marking which would indicate that the package contained a bid. VT 14:14:29; 14:22:26; 14:37:39. The VA also introduced evidence during the hearing which established that even if a sealed bid label had been affixed to the Federal Express mailing envelope, that label could have been removed without any indication on the mailing envelope that something had been previously affixed. VT 14:39:00.

The weight of the evidence in the written record and the hearing record supports the finding that at the time Holtman's bid package was delivered to the agency, there was nothing on the mailing envelope to indicate its contents. While it appears that Mr. Holtman affixed a sealed bid label to the Federal Express mailing envelope, we conclude that the label was removed or otherwise detached during Federal Express transit. Accordingly, the warehouse/receiving personnel had no reason to treat it differently than any other Federal Express package. The fact that the Federal Express airbill called for delivery before 9:30 a.m. constitutes directions to Federal Express, but does not apprise the government that the envelope contained a bid package.

Since the package arrived at the warehouse only 39 minutes before bid opening and was received without markings that it contained a bid, we find that the bidder failed to reasonably fulfill its responsibility to ensure timely delivery; thus, the agency was not the sole or paramount cause for the late delivery. See Bay Shipbuilding Corp., B-240301, Oct. 30, 1990, 91-1 CPD ¶ 161. Accordingly, VA properly rejected the bid as late since it was not received in the location specified in the IFB by bid opening. Weather Data Servs., Inc., supra.

The protest is denied.


for James F. Hinchman
General Counsel

¹Mr. Harrison testified that the Federal Express mailing envelope which contained Holtman's bid was lost in transit between the VA Medical Center in Dayton and the VA headquarters in Washington, D.C.. VT 14:43:23; 15:04:42.